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APR 2 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 697

WILLIAM C. McDOUGALL,

Petitioner,

vs.

UNITED STATES CIVIL SERVICE COMMISSION, INDIVIDUALLY AND OFFICIALLY, CONSISTING OF ROBERT RAMSPECK, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

WILLIAM C. McDOUGALL,
Petitioner Pro Se.

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OCTOBER TERM, 1952

No. 697

WILLIAM C. McDOUGALL,

Petitioner,

vs.

UNITED STATES CIVIL SERVICE COMMISSION, INDIVIDUALLY AND OFFICIALLY, CONSISTING OF ROBERT RAMSPECK, JAMES M. MITCHELL, FRANCES PERKINS,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

William C. McDougall, in his own behalf, prays that a writ of certiorari issue to review the judgment entered in this case on February 5, 1953, by the United States Court of Appeals for the District of Columbia.

Opinion Below

The memorandum opinion of the District Court (R. 57) is not reported. The opinion in the Court of Appeals (R. 59) has not yet been reported.

Jurisdiction

The judgment of the Court of Appeals was entered on February 5, 1953 (R. 59). The jurisdiction of this Court is invoked under Sect. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented

Whether a person inducted into the military service of the United States during World War I and assigned to Camp Humphreys, Va. for full-time training and full-time duty, being thereby disrupted in his economic and social life, and being discharged under honorable conditions after seventeen (17) days of service for physical disqualification, and, having been paid the statutory military pay at time of discharge and later was paid $60.00 additional military pay, is entitled to preference in federal employment within the meaning of the Veterans' Preference Act of 1944?

Statutes Involved

The pertinent portions of the statutes involved are set forth in the appendix (*infra*, p. 11).

Statement

Appellant was inducted into the military service of the United States on June 15, 1918 from Local Board for Division No. 12, Pittsburgh, Pa. He was sent to Camp Humphreys, Va. for training and there performed full-time duty at the disposal of military authorities which included drilling, digging trenches, guard duty, work details and bayonet practice. On July 1, 1918 he was discharged from the military service and issued form No. 638, A. G. O., "Discharge from Draft", which is dated June 28, 1918 on the face of the form and on reverse side same shows, "Paid in Cash $25.30, June 28, 1918, Paid in full, Jul. 1, 1918" (R. 6, 7, 8, 9).

Appellant's veteran's preference was recognized by Appellees or their agents from June 11, 1947 to April 6, 1950 on VA forms 5-3855 or Standard Form 50, United States Civil Service Commission (Plaintiff's Exhibits 2 to 7, inclusive) (R. 10 to 21).

Appellant's non-entitlement to veteran's preference is shown on Standard Form 50, United States Civil Service Commission dated April 7, 1950 (Plaintiff's Exhibit 8) (R. —), and same shows A-2 retention category and furlough on account of reduction in force, notwithstanding an efficiency rating of "Very Good" and total service in civilian capacity in excess of twenty-three (23) years, which, with veteran's preference, warranted the assignment of retention points in excess of several other civilian employes retained in employment in the same occupational classification.

Appellant appealed from revocation of his veteran's preference and decision by Board of Appeals and Review of the United States Civil Service Commission dated September 7, 1950 holds he is not entitled to veteran preference under Sect. 2 of the Veterans' Preference Act of 1944, as amended, unless the Department of the Army should certify, "that you did serve on active duty and was discharged under honorable conditions therefrom" (Plaintiff's Exhibit 9) (R. 24, 25).

Specification of Error to be Urged

The Court below erred:

1. In holding the principles of *Patterson* v. *Lamb* (329 U. S. 539) and *Mitchell v. Cohen* (333 U. S. 411) apply.

2. In failing to give effect to the plain intent of Congress, as disclosed by the legislative history of the Veterans' Preference Act of 1944 as to type of ex-serviceman intended to be entitled to the benefits of the Act.

3. In failing to hold the appellant is a veteran or ex-

serviceman within the meaning of the Veterans' Preference Act of 1944.

4. In affirming the judgment for respondents.

Reason for Granting the Writ

1. The Court below has given improper effect to the decisions rendered in the cases of *Patterson* v. *Lamb* (329 U. S. 539) and *Mitchell* v. *Cohen* (333 U. S. 411).

In the Lamb case he received his notice to report for induction on November 11, 1918. Said notice was cancelled before he entrained for military training camp. In the language of this Court he, "got no farther than his local board". In his action he sought to compel the issuance to him of an Honorable Discharge in lieu of a "Discharge from Draft". The Court there held the War Department was within its power in granting a "Dischage from Draft".

In the Cohen case he was a member of the Volunteer Port Security Force of the Coast Guard Reserve; he retained his normal civilian employment; he received no military pay; he could be disenrolled at his own request and could not be transferred away from his home without his consent.

In contrast with the above cases, the appellant was inducted June 15, 1918 and arrived at Camp Humphreys, Va. on June 16, 1918; he there performed full-time duty at the disposal of military authorities such as drilling, work detail, guard duty and bayonet practice until July 1, 1918 when he was discharged from the military service and issued form No. 638, A.G.O., Discharge from Draft, for physical disqualification and paid $25.30. Said payment represented statutory pay and transportation cost for return home and cost of one or two meals enroute.

The appellant does not find any prior decisions by your Honorable Court where the facts are in point. However, in the case of *Hurley* v. *Crawley*, 50 Fed. (2nd) 1010, 60

App. D. C. 245, decided by the Court of Appeals for the District of Columbia, the facts are most nearly analogous. Crawley was inducted on September 2, 1918; arrived at camp on the following day, September 3, 1918; was hospitalized from September 4, 1918 to September 26, 1918; served as an orderly at base hospital until October 3, 1918 and was again hospitalized on account of sickness until November 9, 1918 when he was discharged from the military service and issued "Discharge from Draft". His total active duty was seven (7) or eight (8) days. It was held in the above case that Crawley was a, "Soldier, ad interim, as respects civil service preference".

2. The necessity for legislation to assure draftees and enlisted men of re-employment with the Federal government upon their return to civilian life was recognized by the Congress in the enactment of the Selective Service and Training Act of 1940 (54 Stat. 885, C 720), Sect. 8(b)-"A) provides,[1] that, "—in order to perform such training and service has left or leaves a position—such person shall be restored to such position or to a position of like seniority, status and pay."

The Veterans' Preference Act of 1944 (appendix, infra p. 11) was later passed and embodied the same principles. The reports of the House and Senate Committees on Civil Service on the legislation[2] stressed the general re-employ-

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[1] Selective Service and Training Act of 1940, 54 Stat. 885, C 720. Sect. 8(b) In the case of such person, who, in order to perform such training and service has left or leaves a position in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for re-employment within forty days after he is relieved from such training and service—(A) If such position was in the employ of the United States Government, its Territories or possessions, or District of Columbia, such person shall be restored to such position or to a position of like seniority, status and pay.

[2] H. R. 4115, 78th Congress, 2nd session, which became the Veterans' Preference Act of 1944, for the first time brought together in comprehensive statutory form the various statutory provisions, Executive Orders and regulations conferring on veterans special federal employment benefits and privileges (H. R. 1289, 78th Congress, 2nd Session, P-1; S. Rep. 907, 78th Cong., 2nd Session, P-1: 90 Cong. Record 3502, 3505). The bill was

ment and rehabilitation benefits provided by the bill for those whose normal employment and mode of life had been disrupted by their service in the armed forces. Congress intended to preserve and expand preference rights theretofore conferred upon veterans of prior wars.

The debates in Congress with their repeated references to "re-employment", "when the soldier returns who has been willing to fight for his country on the fighting front", and "when they return from the service" (90 Cong. Record 3502, 3504, 3506) reflect a clear Congressional purpose to confer employment preference only on those veterans who gave up their normal pursuits and surroundings and freedom of movement to the demands of military service.

Among the benefits which the said Veterans' Preference Act confers on such honorably discharged veterans (or those discharged under honorable conditions) is the one that in, "certification for appointment, in appointment, in re-instatement, in reemployment, and in retention in civilian positions" in the Government, preference shall be given to "those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States during any war—and have been separated therefrom under honorable conditions".

3. The decision below holds the appellant is not an ex-serviceman within the meaning of the Veterans' Preference Act of 1944.

In ordinary usage, the words "ex-serviceman" or "veteran" as those terms are commonly used with reference to

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reported to the House on March 27, 1944 (90 Cong. Record 3156; H. R. No. 1289, 78th Cong., 2nd Session) and passed the House on April 7, 1944 (90 Cong. Record 3507). Hearings were held before the Senate Committee on May 17 and 23, 1944 (Hearings before the Committee on Civil Service (Senate) on S-1762 and H. R. 4115, 78th Congress, 2nd Session) and the bill was reported to the Senate on May 25, 1944 (90 Cong. Record 4959; S. R. 907, 78th Cong., 2nd Session). As amended, it passed the Senate on June 12, 1944 (90 Cong. Record 5785) and was approved on June 27, 1944 (90 Cong. Record 6712).

a person who has served in the armed services of the United States, connote one who enlisted, volunteered, was mustered, or was inducted, into the armed services of the United States; while serving in wartime was on full-time active military duty; was entitled to receive statutory military pay and allowances from the time of his entry into the armed services until his separation therefrom; was at all times subject to military orders and discipline, and, during his period of service, did not form a part of the civilian community. It is in this accepted sense that the Congress makes provision for the granting of gratuities and other benefits to ex-servicemen.

There are certain benefits under the Veterans Administration where the veteran or ex-serviceman is defined as a person who has served ninety (90) days or more.

Under the World War Adjusted Compensation Act of May 19, 1924, 43 Stat. 122, U. S. C. Title 38, sect. 501, it is provided, "The amount of adjusted service credit shall be computed by allowing the following sums for *each day of active service, in excess of sixty days, in the military or naval forces of the United States* after April 5, 1917 and before July 1, 1919", etc. (emphasis supplied).

Under "Definitions" of said World War Adjusted Compensation Act, sect. 2, provides, (a), The term "veteran" includes any individual, member of the military or naval forces of the United States at any time after April 5, 1917 and before November 12, 1918, but does not include (1) any individual at any time during such period or thereafter separated from such forces under other than honorable conditions, (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform, or (3) any alien at any time during such period or thereafter discharged from the military or naval forces on account of his alienage.

No formula or minimum service requirement was specified under the Revenue Act of 1918, 40 Stat. 1151, Sect. 1406, which provides:—

> "That all persons serving in the military or naval forces of the United States during the present war who have, since April 6, 1917, resigned or been discharged under honorable conditions—shall be paid, in addition to other amounts due them in pursuance of law, $60 each".

The appellant was paid said $60.00 in addition to the statutory military pay as shown on his "Discharge" from the military service, Plaintiff's Exhibit "One", Part I. (R. 6, 7).

No formula or minimum service requirement was specified under the Veterans' Preference Act of 1944.

If the decision below is permitted to stand it would result in an unjust discrimination against men inducted during W. W. I and discharged from military service at military training camp for physical disqualification incurred prior to induction, as such men were issued a "Discharge from Draft" on form 638 A.G.O. by Order of Secretary of War dated January 12, 1918,[3] instead of the regular Honorable Discharge on Form 38, A.G.O.

Under the Selective Training and Service Act of 1940, 54 Stat. 885, the statute prescribed the issuance of a certificate of satisfactory service upon completion of said training, unless sooner discharged.[4] Thus it would appear

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[3] *Davis* v. *Woodring*, 111 Fed. (2nd) 523, it was held: "While therefore we have no hesitation in holding that Petitioner was a soldier of the United States—and he served under honorable conditions—cannot interfere with internal management of War Department."

[4] Selective Service and Training Act of 1940, 54 Stat. 885, C 720, Sect. 3(a): Provided further, that no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and service has been satisfactorily determined.

Sect. 3(b): Each man inducted under the provisions of subsection (a)

if the appellant's service were rendered during W. W. II instead of W. W. I he would have been issued the Certificate of Satisfactory Service [5] and said Certificate, being an Honorable Discharge, would be acceptable to the United States Civil Service Commission showing entitlement to veteran's preference as appears in the last paragraph of decision of Board of Appeals and Review of said United States Civil Service Commission shown as Plaintiff's Exhibit "nine' (R. 24), as follows:—

> "In view of all the facts of record in your case, it is the opinion of the Board of Appeals and Review that you are not entitled to veteran preference under Section 2 of the Veterans' Preference Act of 1944, as amended, *unless the Department of the Army should certify that you did serve on active duty and was discharged under honorable conditions therefrom*". (Emphasis supplied).

Your appellant was entitled to receive and did receive statutory military pay from the time of his entry into the armed services until his separation therefrom; was at all times during said period subject to military orders and

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shall serve for a training period of twelve consecutive months, unless sooner discharged, except that whenever the Congress has declared that the national interest is imperiled, such twelve-month period may be extended by the President to such time as may be necessary in the interest of national defense.

Sect. 8(a): Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under Section 3(b) shall be entitled to a certificate to that effect upon completion of such period of training and service", etc.

[5] In appellant's employment as Rating Specialist, Legal, at Regional Office of the Veterans' Administration, Pittsburgh, Pa., it was an incident to said employment to carefully examine the service records of thousands of ex-servicemen filing claims, and, in hundreds of cases it was found inductees were discharged at military training camps after seven to thirty days of service for disability, physical, organic or mental, which was shown in their respective discharges as E.P.T.I. (Existed prior to induction) and in all cases were issued the regular discharge form in use during W.W. II, to wit, Form 53, Honorable Dicharge.

discipline; he was disrupted in his economic and social life during said period of military service, being on full-time duty at Camp Humphreys, Va.; he received at time of discharge from service $25.30 which included statutory military and he received and was entitled to receive the additional military pay of $60.00 payable only to ex-servicemen under the provisions of the Revenue Act of 1918, 40 Stat. 1151, Sect. 1406, approved February 24, 1919, as appears on appellant's "Discharge". (Plaintiff's Exhibit "One", Part I (R. 6, 7).

The appellant meets all the requirements of the Veterans' Preference Act of 1944 as to the type of ex-serviceman intended to be entitled to benefits thereunder.

For the reasons stated I submit that the decision below is so far-reaching as imperatively to require review by this Court.

Conclusion

For the reasons stated, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

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Appellant, Pro Se,
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Ingram, Pittsburgh 5, Pennsylvania.

APPENDIX I

Selective Service Act of May 18, 1917, 40 Stat. 76.

Par. 7, Sect. 2—(in part) *All persons Drafted into the service of the United States* and all officers accepting commissions in the forces herein provided for *shall, from the date of said draft* or acceptance, *be subject to the laws and regulations governing the Regular Army,* except as to promotions, so far as such laws and regulations are applicable to persons whose permanent retention in the military service on the active or retired list is not contemplated by existing law, and *those drafted shall be required to service for the period of the existing emergency unless sooner discharged.* (Emphasis supplied).

Veterans' Preference Act of 1944, 58 Stat. 387, as amended, 5 U. S. C. 851, Section 2 thereof, as follows:

Sect. 2. In certification for appointment, in appointment, in reinstatement, in reemployment, and *in retention in civilian positions,* in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, *preference shall be given to*—(4) those ex-servicemen and women *who have served on active duty in any branch of the armed forces* of the United States, *during any war,* or in any campaign or expedition (for which a campaign badge has been authorized), *and have been separated therefrom under honorable conditions*:—. (emphasis supplied).

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In the Supreme Court of the United States

OCTOBER TERM, 1952

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UNITED STATES CIVIL SERVICE COMMISSION, INDIVIDUALLY AND OFFICIALLY, ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The District Court for the District of Columbia filed no opinion. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 59A-61A) is reported at 202 F. 2d 361.

JURISDICTION

The judgment of the Court of Appeals was entered on February 5, 1953 (R. 62A). The petition for a writ of certiorari was filed on April 2, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner who, for physical reasons, received a "Discharge from Draft" thirteen days following his induction but before being finally accepted and enrolled in the military service, may be considered as having "served on active duty" within Section 2 of the Veterans' Preference Act of 1944, and accordingly entitled to employment preference under that Act.

STATUTE AND REGULATIONS INVOLVED

Section 2 of the Veterans' Preference Act of 1944, 58 Stat. 387-388, as amended, 5 U.S.C., Supp. V, 851, and pertinent World War I Selective Service Regulations are set out in the Appendix, *infra*, pp. 9-13.

STATEMENT

Petitioner was notified on April 7, 1950, that because of a reduction in force he was to be furloughed, effective August 1, 1950, from his position in the Regional Office of the Veterans Administration (R. 22A-23A). For reduction in force purposes, petitioner requested the Civil Service Commission to rule that he was entitled to veterans' preference. This request was denied, and the denial was affirmed by the Board of Appeals and Review of the Civil Service Commission. (R. 24A-25A.)

Thereafter petitioner instituted this suit in the District Court against the Civil Service Commission and its members (R. 2A-6A), seeking a declaration that he was entitled to preference eligibility under § 2 of the Veterans' Preference Act of 1944. His claim is based upon a period of thirteen days'

service commencing with his induction on June 15, 1918, by his local board at Pittsburgh, Pennsylvania (R. 37A-38A) and culminating in his "Discharge from Draft" on June 28, 1918, at a mobilization camp in Virginia (R. 6A-7A) where he was found physically unfit for military service because of defective vision and a missing index finger. (R. 6A-7A).[1]

The District Court sustained respondents' motion for judgment on the pleadings (R. 57A-58A) and the Court of Appeals affirmed (R. 59A-62A).

ARGUMENT

Petitioner claims to be entitled to the employment preference accorded to ex-servicemen by Section 2 of the Veterans' Preference Act of 1944, 58 Stat. 387-388, as amended, 5 U.S.C., Supp V, 851, Appendix, *infra*, p. 9. Except for immaterial factual distinctions, the claim presented is analogous to that considered and rejected by this Court in *Mitchell* v. *Cohen*, 333 U.S. 411; and the relief which petitioner seeks is comparable to that sought and denied in *Patterson* v. *Lamb*, 329 U.S. 539. The Court of Appeals, relying upon these decisions, affirmed the judgment of the District Court. This decision is clearly correct, and no question of general importance meriting review by this Court is presented.

Like thousands of others petitioner received the

[1] Petitioner's request that he be issued a "Discharge from Military Service" in lieu of the "Discharge from Draft" was denied by the Army Board on Correction of Military Records on November 8, 1950 (R. 38A-44A).

call to military service in accordance with the World War I Selective Service Act, 40 Stat. 76. He was inducted on June 15, 1918, at Pittsburgh, Pennsylvania, and was sent to a mobilization camp at Camp Humphreys, Virginia; thirteen days later, he was found to be physically unfit for a military duty, was rejected, and was issued a Discharge from Draft, and he then returned to his home.[2] On the basis of these facts, petitioner contends he qualifies as an ex-serviceman who has served on active duty and is entitled to the benefits of the Veterans' Preference Act of 1944, Section 2 of which established a preference in government employment for "those ex-servicemen and women *who have served on active duty* in any branch of the armed forces of the United States, during any war * * * and have been separated therefrom under honorable conditions." (Emphasis supplied.)

The preference accorded by Section 2 of the Act thus applies only to those "ex-servicemen * * * who have served on active duty," and this Court has defined the term "ex servicemen", for purposes of the statute, "as relating only to those who performed military service on full-time active duty * * *" *Mitchell* v. *Cohen, supra* at p. 421. The thirteen days' service upon which petitioner here relies consists of nothing more than time which elapsed between his induction by the local board and his ultimate rejection by the military authorities—time

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[2] Discharge from Draft, Form No. 638, A.G.O. was used "for discharge of aliens and alien enemies and of men rejected on account of physical unfitness, dependency, etc." (R. 7A).

consumed by the selective service process. In no sense of the word was it "active" military duty.[3] See *Patterson* v. *Lamb, supra;* cf. *Falbo* v. *United States,* 320 U.S. 549, 553.

That active duty did not commence prior to final acceptance and enrollment by the military authorities is substantiated by the fact that Congress found it necessary to enact special legislation in order to extend to inductees the insurance and disability benefits provided for military personnel in "active service" by the War Risk Insurance Act of 1917.[4] Thus, the 1917 Act was amended by the Act of December 24, 1919, 41 Stat. 371, § 7 of which provided:

> That if after induction by the local draft board, *but before being accepted and enrolled for active service,* the person died or became disabled as a result of disease contracted or injury suffered in the line of duty * * * he or those entitled thereto shall receive the benefits of compensation payable under Article III: *Provided,* That any insurance application made by a person after induction by the local draft board but before being accepted and enrolled for *active service* shall be deemed valid. [Emphasis supplied.]

The committee report accompanying the amendment clearly indicates that service after induction

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[3] Selective Service Regulations, 174, 177, 178, Appendix, *infra,* pp. 9-13.

[4] 40 Stat. 409, §§ 400, 401.

but prior to final acceptance and enrollment was not regarded as active service.[5]

In substance, the 1919 Amendment appears in § 24 of the World War Veterans Act, 43 Stat. 614, 38 U.S.C. 448; and Congress further recognized that active service commences only after final acceptance by the military authorities in the Act of June 28, 1934, § 1, 48 Stat. 1281, as amended, 38 U.S.C. 503, which provides certain benefits to surviving widows and children of "any deceased person who served in World War I;" a "person who served" is defined in § 3 (38 U.S.C. 505) as one "who was finally accepted for active service in the military or naval forces of the United States."

In addition, the Veterans Administration and its predecessor, the Veterans Bureau, have consistently held that an inductee not finally accepted and enrolled is not an "ex-serviceman" where veterans benefits are made available or payable to the "ex-servicemen,"[6] or where compensation for an in-

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[5] "Section 7 as amended adds a new section to the war-risk insurance act which is designed to dispose of the so-called "inducted" man problem. This section declares that a person is not in active service within the meaning of the war-risk insurance act until he has been examined at the camp or other place of mobilization and "accepted and enrolled for active service." The first proviso covers the case of men who are injured in line of duty, etc. after induction and prior to final acceptance, and the second proviso covers cases where an inducted man makes an application for insurance prior to being finally accepted." Sen. Rep. No. 339, 66th Cong., 2d Sess., p. 2.

[6] *E.g.* Administrator's Decision, Veterans Administration, No. 46, April 20, 1931, involving § 2 of the Act of July 3, 1930, 46 Stat. 1016, amending § 200 of the World War Veterans Act of 1924, 38 U.S.C. 471, which authorized disability benefits for "any ex-serviceman who entered the service prior to November 11, 1918 * * * who is * * * suffering * * * permanent disability * * *."

jury is contingent upon the injury having been received in the "active service."[7] This long-applied administrative interpretation is, of course, entitled to great weight. *United States* v. *Henning,* 344 U.S. 66, 75; *United States* v. *Zazove,* 334 U.S. 602; *United States* v. *Citizens Loan Co.,* 316 U.S. 209, 214.

Hurley v. *Crawley,* 60 App. D.C. 245, 50 F. 2d 1010, relied upon by petitioner (Pet. 4-5), decided only that the holder of a Discharge from Draft certificate was an "honorably discharged soldier" within the meaning of the term as used in Civil Service Rule VI which accorded preference to "honorably discharged soldiers, sailors, and marines." Whether he had served on active duty was a question not involved under the law then in effect.

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[7] *E.g.* Administrator's Decision, Veterans Administration, No. 58, June 6, 1931, involving § 202 of the World War Veterans Act of 1924, as amended, 38 U.S.C. 473, providing for compensation "to any person who suffered the loss of the use of a creative organ or one or more feet or hands as the result of an injury received in the *active service* in line of duty between April 6, 1917, and November 11, 1918 * * *." Cf. Administrator's Decision, Veterans Administration, No. 635, February 28, 1945.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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WARREN E. BURGER,
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MAY, 1953.

APPENDIX

1. Section 2 of the Veterans' Preference Act of 1944, 58 Stat. 387-388, as amended, 5 U.S.C., Supp. V, 851 provides in pertinent part as follows:

> In certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions in all establishments, * * * of the Government, * * * preference shall be given to * * * (4) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, * * * and have been separated therefrom under honorable conditions; * * *

2. Selective Service Regulations (II Selective Service Rules, Regulations and Instructions, 1917-1919, War Department, Office of Provost Marshal General) read in relevant part as follows:

> Sec. 1(n). The term "selected man" shall include all registrants who, under the pre-existing regulations had been notified of selection (old Form 164-B) or who, under these Regulations, have been notified by their Local Boards to report for military duty and entrainment. (Form No. 999, as amended, C.S.S.R. No. 2. January 25, 1918.)
>
> Section 157. *The order and notification of induction into military service.*
>
> The Provost Marshal General is charged with the mobilization of selected men and with all matters relating to their assembly, entrainment, and transportation up to the time they

arrive at a mobilization camp and including supervision of the preparation of schedules for entrainment and transportation. The Provost Marshal General shall notify each State Adjutant General to furnish, at a specified time or times and place or places, the net quota of the State or any proportion or part thereof; whereupon the Adjutant General of the State shall notify each Local Board of the exact number of selected men to be furnished by such Board, and of the date, place, and hour of entrainment. Upon receipt of this notification from the Adjutant General of the State, the Local Board shall enter in column 24 on the Classification List, after the name of each registrant to be called for entrainment, the day and hour on which the registrant is to report to the Local Board, which day and hour must be not more than 24 nor less than 6 hours in advance of the time set for entrainment.

Immediately upon making such entries in column 24 of the Classification List opposite the name of each such registrant the Local Board shall mail to the last-known address of each such registrant an order (Form 1028, including Form 1028A) to report to the Local Board for military duty at the hour, day, and place specified in said order, which hour and day shall be the same as that stamped or written in column 24 of the Classification List after the name of such registrant. From and after the day and hour thus specified each such registrant shall be in the military service of the

United States, and either the entry of such date after the name of any such registrant on the Classification List or the mailing to any such registrant of the order into military service as provided in this paragraph shall constitute the giving of notice to such registrant that from and after such day and hour he will be in the military service of the United States, and of his duty to report to the Local Board at the hour and on the day specified.

Orders to report to a Local Board for military duty (Form 1028) should be issued in ample time for selected men to compose their affairs before leaving home.
(Form No. 999).

Section 174. *Credit Cards (Form 1029 A and B) of Selected Men to Be Completed at Military Camps or Stations.*

Upon arrival at the military camp or station, the adjutant shall take charge of all papers delivered to him by the leader of the party of selected men. Upon the receipt by mail of Form 1029 the adjutant shall enter a crossmark (X) in column 7 thereof, both original and duplicate, opposite the name of any member of the party who has failed to report at the military camp or station, and will indorse the reverse side thereof, will mail the original to the Provost Marshal General and the duplicate to the proper Local Board. Each Form 1029 A and B shall be retained by the adjutant until final acceptance or rejection of the man concerned, when Form 1029 A shall be completed and returned to the proper Local Board.

Form 1029 B will be completed and mailed direct to the Provost Marshal General. No Form 1029 A or 1029 B will, in any case, be retained longer than one month from the date of induction into military service of the selected man concerned. (Form No. 999 as amended C.S.S.R. No. 1. January 21, 1918).

Sec. 177. *Dispostion of Men Rejected or Discharged from Military Service at a Military Camp or Station.*

When any selected man is rejected at a military camp or station, the commanding officer thereof will promptly notify his Local Board of the fact, cause, and date of rejection, using Form 1029-A, and the Provost Marshal General using Form 1029-B. When any selected man is, subsequent to acceptance, discharged at a military camp or station the commanding officer thereof shall similarly notify the Local Board (Form 1029-C) and the Provost Marshal General (Form 1029-D).

If the rejection or discharge is on account of the fact that the registrant is an alien, or an alien enemy, or that he is physically disqualified for general military service, the Local Board shall place the registrant forthwith in Class V. If the discharge or rejection is on account of dependency or any other cause for deferred classification prescribed by these regulations, the Local Board shall proceed to reclassify the registrant in accordance with his status as determined by the action of the mili-

tary authorities in discharging him. (Form 999, as amended C.S.S.R. No. 1. January 21, 1918)

Section 178. *Account of Quotas to be Kept at the Office of the Provost Marshal General.*

The Provost Marshal General shall keep the account of quotas of all local boards. Only men actually reporting and finally accepted for military service shall be credited to the accounts of local boards. Credit shall be allowed as of the date of acceptance by the military authorities in each case. (Form 999 as amended, C.S.S.R. No. 1. January 21, 1918)

☆ U. S. GOVERNMENT PRINTING OFFICE: 1933 253874 1619

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Office - Supreme Court, U.S.
FILED
MAY 28 1953
HAROLD B. WILLEY, Clerk

PETITIONER'S REPLY BRIEF

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 697

WILLIAM C. McDOUGALL,

Petitioner,

v.

UNITED STATES CIVIL SERVICE COMMISSION,
Individually and Officially, Etc.

WILLIAM C. McDOUGALL,
Petitioner, Pro Se.

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SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

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PETITIONER'S REPLY BRIEF

The discussions here presented pertain to Brief for Respondents in Opposition to Petition for a Writ of Certiorari, and references in said Brief for Respondents in Opposition relating to Petitioner's service in the Army in 1918, wherein it appears said references are not fully substantiated by the certified copies of the official army records filed November 8, 1951 in the District Court below and attached to affidavit of Joseph Kovner, Esq., Attorney, Department of Justice (R. 36A to 43A, inc.), and copy of Petitioner's Discharge from Draft (R. 6A, 7A, 9A).

1. In Note 1, page 3 of Brief of Respondents in Opposition to Petition for a Writ of Certiorari, it is stated as follows:—

> "Petitioner's request that he be issued a 'Discharge from Military Service' in lieu of the 'Discharge from Draft' was denied by the Army Board on Correction of Military Records on November 8, 1950 (R. 38A-44A)."

On November 8, 1950, over the signature of John J. Donovan, Colonel, AGO Commanding (R. 43A) a "Hearing" was denied in connection with the request for correction of Army records.

In connection with the above John H. Sullivan, Commissioner of Veterans' Cases filed a Report and Opinion of the Commissioner on Opposing Motions for Summary Judgment. Same was filed on January 16, 1952 in the District Court below and he states in his opinion (R. 54A, top of page) as follows:

> "In exhausting all administrative remedies available to plaintiff, it is to be noted that he sought the statutory correction of his discharge from draft but was denied the hearing provided by the statute because the Department of the Army was of the opinion that he had not tendered sufficient reasons for such hearing. Defendant's Exhibit No. 3. The *hearing* was denied; not his petition for correction of discharge". (emphasis by the Commissioner).

2. In Note 3, page 5 of Brief of Respondents in Opposition references are made to Selective Service Regulations 174, 177 and 178.

In connection with the above the Petitioner directs attention to the *absence* from Archivist Records of any

Form 1029 as provided for by Section 174, Selective Service Regulations. Said *absence* is shown in Report dated September 7, 1950, The National Archives, War Records Branch (R. 37A and 38A) which states under numbered paragraph "4" on R. 38A as follows:

> "4. No PMGO Form 1029 with this man's name on it was found".

The Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases, which is an exhaustive consideration of all the pertinent and material matter, states the following relative to the missing Forms 1029: (R. 51A)

> "At this point it is worthy of note that the regulations involved here require Form 1029 (A & B) must be retained by the adjutant at the mobilization camp until final rejection or acceptance of the man concerned, such as plaintiff here. Form 1029(A) must then be completed and mailed to the Provost Marshal General. In Defendants' Exhibit No. 1, the Archivist reports that no such forms 1029 are found in the Archives with plaintiff's name on. Section 166, 1918 Regulations pp. 145, 146"

The Commissioner continues as follows: (R. 51A)

> "Section 166, supra, pertinently provides: Acceptance or rejection must be determined and both cards placed in the mail within 15 days of the date of registrant's induction into service, as indicated on Form 1029 A, except in exceptional cases of illness, when (page R. 52A) Forms 1029 A and B may be held for 30 days. This is the extreme case. *Ordinarily cards should be mailed within a few days*

after the receipt thereof". (emphasis by the Commissioner)

The Commissioner continues as follows: (R. 52A)

"No illness of plaintiff is on record, so 30 days as provided in regulation is not applicable. His physical examination report made at mobilization camp shows nothing that was not on the local draft board physical examination report. As there is no record of any such Form 1029 in Archives, the only basis for the action of the Army is contained in the discharge itself, a Discharge from Draft. On the forward side of this discharge, it is stated that plaintiff was discharged from the military service of the United States by reason of loss of index finger right hand and defective vision. There is nothing out of the ordinary shown here that did not appear on the local draft board records, and on the record of appeal therefrom. The circumstances show that in the case at bar, Form 1029 cards concerning plaintiff, should have been mailed within a few days after his arrival at mobilization camp, because plaintiff in all probability was finally accepted by the Army prior to the bayonet-training incident, supra. It was incumbent upon the mobilization camp adjutant, under the regulations, to see to it that the Army records at that time included Forms 1029 A and Form 1029 C, or, under the circumstances, both forms, but, whether he did or did not perform this duty, the records of the Army are now barren of such material, so pertinent to the question of whether plaintiff was actually on active duty in any branch of the armed forces of the United States. (Section 305, p. 254)"

The "bayonet-training" incident above referred to is mentioned in the Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases (R. 48A) as follows:

> "One thing stands out as indicative of the allegation that he was definitely accepted for active military service as a 'chosen' one of selectees. In bayonet practice and instruction, a sergeant discovered through the usual push and pull on inductee's rifle that something was seriously wrong with plaintiff's grasp on rifle. The sergeant noticed the missing index finger. Two days later, plaintiff was discharged. It seems reasonable from experience that plaintiff had been accepted for full military duty but that, after the action of the drill sergeant, his physical condition status was reopened. It was then determined as *not fit for combat duty status.*" (emphasis by the Commissioner)

3. Statement of Respondents in Brief for Respondents in Opposition, on pages 2 and 3, allege Petitioner's service was for the period of thirteen (13) days.

The "Discharge from Draft" – dated June 28, 1918 at Camp Humphreys, Va. as shown on its face (R. 7A). However, on reverse side of said Discharge shown as Plaintiff's Exhibit "One" (Part 2) in the Transcript of Record (R. 9A) it is also shown, "Paid in Full (stamp) Jul. 1, 1918". The total service is seventeen (17) days computing date of induction and entrainment on June 15, 1918 up to and including date he was paid off and left Camp Humphreys, Va. on July 1, 1918.

It is therefore apparent the Petitioner was in training at Camp Humphreys, Va. in excess of 15 days, within

which period his acceptance or rejection must have been determined under the 1918 Regulations, Section 166, as more fully set forth in Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases, *supra*.

The entire Report and Opinion of John H. Sullivan, Commissioner of Veterans' Cases (R. 45A to 57A, inclusive) is respectfully referred to as pertinent and material to all questions of law and fact in this proceeding.

Respectfully submitted,

WILLIAM C. MCDOUGALL,
Petitioner, Pro Se.

Encl